



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 14, 1993

**Honorable Judith Zaffirini
Chair**

**Committee on Health and Human Services
Texas State Senate
P.O. Box 12068
Austin, Texas 78711**

Letter Opinion No. 93-85

**Re: Whether the practice of reflexology
falls within the definition of "massage
therapy" in article 4512k, V.T.C.S., and
related questions (ID# 19675)**

Dear Senator Zaffirini:

You have renewed the request of Chet Brooks, your predecessor as chair of the Senate Committee on Health and Human Services, concerning whether the practice of reflexology falls within the definition of "massage therapy" in article 4512k, V.T.C.S. According to your predecessor's request letter:

The practice of reflexology involves the application of pressure to nerve endings where the impulse is conducted through the nerves located in the hands and feet. A reflex response to this pressure to nerves results in stimulation to a responding body organ. Because soft tissue is also located in the hands and feet, pressure is inadvertently applied to it in the practice of reflexology simply because of its close proximity to nerve endings.

Article 4512k defines "massage therapy" as follows:

"Massage therapy" means the manipulation of soft tissue. The term includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics, either by hand or with mechanical or electrical apparatus for the purpose of body massage. Massage therapy may include the use of oil, salt glows, heat lamps, hot and cold packs, tub, shower, or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the

massage therapy is for therapeutic purposes. As used in the Act, the terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

V.T.C.S. art. 4512k, § 1(1).

Whether reflexology techniques constitute "massage therapy" as defined in article 4512k is a question of fact and therefore is not an appropriate subject for an opinion from this office. See Letter from Sarah Woelk, Assistant Attorney General, Opinion Committee to Robert MacLean, M.D., Texas Department of Health (Nov. 7, 1991) (copy enclosed). The request letter does not state sufficient facts for us to determine exactly what techniques are used in the practice of reflexology. We therefore are unable to answer this question.

Your predecessor's request letter also informs us that the Advisory Council on Massage Therapy ("advisory council") has determined that the practice of reflexology does constitute "massage therapy" and asks whether the advisory council has "the authority to make a binding interpretation regarding the inclusion of reflexology within the massage therapy scope of practice, or is the advisory council's authority limited as its title implies, to advising the [Texas] Board of Health on making such determinations?" The only rulemaking authority expressly granted to the advisory council pertains to the prescribing of "application forms and registration fees." V.T.C.S. art. 4512k § 9(a). The statute gives general rulemaking authority to the Board of Health by providing that the Board of Health "shall adopt rules consistent with this Act." *Id.* § 7(a). We conclude that the advisory council does not have rulemaking authority regarding the inclusion of reflexology as "massage therapy."

The request letter next asks:

Without further action by the Board of Health, does the decision of the advisory council [that reflexology is "massage therapy"] allow the [Texas] Department of Health to require reflexologists to comply with the massage therapy statute? Does the Department of Health have the authority to prosecute reflexologists based solely on the recommendation of the advisory council?

Because the advisory council does not have rulemaking power to establish that reflexology is "massage therapy," its opinion that reflexology is "massage therapy" is advisory only and neither allows nor prevents a requirement that reflexologists comply with the statute. The Texas Department of Health is charged with administering article 4512k and

investigating possible violations of the statute. *Id.* § 7(b), (c). Those duties are not affected by the advisory council's determination.

The request letter finally asks:

If the practice of reflexology falls within the definition of "massage therapy" and reflexologists are determined to be governed by Article 4512k, what must a reflexologist do to obtain a registration certificate?

The letter explains that the Department of Health currently refuses to register persons who admit to practicing reflexology without having registered as massage therapists.

Section 11, subsection (a)(6), of article 4512k provides that the Department of Health may refuse to issue a registration certificate to an applicant for any violation of article 4512k. Subsection (d) of section 11 provides for five years of ineligibility for registration *after conviction* for a violation of article 4512k. Section 2, subsection (b)(1), requires a person who desires to be registered to present evidence of satisfactory completion of massage therapy studies. Finally, section 10, subsection (a), requires an applicant for registration to pass a state examination to qualify for registration. Therefore, a person convicted of practicing "massage therapy" without a registration must wait five years to be registered and must complete the educational and experiential requirements and pass the state examination in order to obtain a registration certificate.

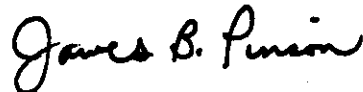
The statute does not set a time period during which the Department of Health may refuse to issue a registration to an applicant who admits a violation of article 4512k but has not been convicted of such a violation. The implication is that the legislature intended to place within the department's discretion the determination of the length of time to refuse to register an applicant who admits a violation, subject to a maximum limitation of five years. The Department of Health, of course, may not exercise such discretion arbitrarily or unreasonably. *Cf. Southwestern Greyhound Lines v. Railroad Comm'n*, 208 S.W.2d 593, 596 (Tex. Civ. App.--Austin 1947, writ ref'd n.r.e.) (whether license to operate motor carrier service should be denied is matter within discretionary powers of the Railroad Commission, subject to court interference only if exercise of discretion is arbitrary or unreasonable). Furthermore, section 11, subsection (c), of article 4512k provides that the rejected applicant is entitled to a hearing before the department in accordance with department rules and the Administrative Procedure and Texas Register Act, V.T.C.S. article 6252-13a.

S U M M A R Y

Whether reflexology techniques constitute "massage therapy" as defined in article 4512k, V.T.C.S., is a question of fact and therefore is not an appropriate subject for an opinion from this office. The Advisory Council on Massage Therapy ("advisory council") does not have authority to promulgate a rule establishing that reflexology is "massage therapy." A determination by the advisory council that reflexology is "massage therapy" does not affect the duties of the Texas Department of Health to administer article 4512k and investigate possible violations of that statute.

A person convicted of practicing "massage therapy" without a registration must wait five years to be registered and must complete the educational and experiential requirements and pass the state examination in order to obtain a registration certificate. The Department of Health has discretion to refuse to register, for a period of no more than five years, an applicant who admits to, but has not been convicted of, practicing "massage therapy" without a registration in violation of article 4512k.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee